

NONDISCRIMINATION/AFFIRMATIVE ACTION

The board of education guarantees to all persons equal access to all categories of employment, retention and advancement in this district, regardless of race, creed, color, national origin, ancestry, age, sex, affectional or sexual orientation, gender identity or expression, marital status, domestic partnership status, familial status, liability for service in the Armed Forces of the United States, disability, nationality, atypical hereditary cellular or blood trait of any individual, nonapplicable disability or because of genetic information or refusal to submit to or make available the results of a genetic test.

An affirmative action/equity program shall be a part of every aspect of employment not limited to but including upgrading; demotion or transfer; recruitment or recruitment advertising; renewal or non-renewal; layoff or termination; rates of pay or other forms of compensation including fringe benefits; employment selection or selection for training and apprenticeships; promotion; or tenure.

The board-designated affirmative action officer shall identify and recommend correction of any existing inequities, and any that occur in the future.

Harassment and Favoritism

The board of education is an affirmative action employer and holds all its employees responsible for maintaining a working environment that is free from all discriminatory practices. Harassment or favoritism on any basis included in the board's statement of equal access to employment, retention and advancement is prohibited.

Administrators and supervisors shall be familiarized with the actions that constitute harassment and favoritism. This material shall be included in the legally mandated affirmative action inservice training for all employees, and shall be clear and specific (see policy 2224). When harassment has been determined to have taken place, appropriate disciplinary action will follow. All such determination shall be reported to the board.

Sexual Harassment

The board of education shall maintain a working environment that is free from sexual harassment.

Administrators and supervisors will make it clear to all staff that sexual harassment is prohibited. No supervisory employee shall threaten or insinuate, either directly or indirectly, that an employee's refusal to submit to sexual advances will adversely affect the employee's continued employment, evaluation, compensation, assignment or advancement. No supervisory employee shall promise or suggest, either directly or indirectly, that an employee's submission to sexual advances will result in any improvement in any term or condition of employment of an employee. Sexually harassing conduct committed by nonsupervisory personnel is also prohibited.

Staff may file a formal grievance related to sexual harassment. The Affirmative Action Officer will receive all complaints and carry out a prompt and thorough investigation and will protect the rights of both the person making the complaint and the alleged harasser.

Findings of discrimination in the form of sexual harassment will result in appropriate disciplinary action.

"Whistleblower" Protection

The board prohibits discrimination or retaliation against any school employee who does any of the following:

- A. Discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the board that the employee reasonably believes is in violation of a law, or a rule or regulation established pursuant to law;
- B. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation established pursuant to law by the board; or
- C. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of law, rule or regulation; is fraudulent or criminal; or is incompatible with public health, safety or welfare or protection of the environment.

The board shall ensure that notices are posted conspicuously in each school, informing employees that they are protected under the "Conscientious Employee Protection Act."

Report on Implementation

The chief school administrator shall devise regulations, including grievance forms and procedures to implement this policy. He/she shall be responsible for informing staff annually of the identity and location of the affirmative action officer and the implementing procedures.

Date: Reviewed: January 7, 2013
Adopted: March 13, 2013

Legal References: Use legal reference sheet.

Cross References: List your appropriate policies. See legal reference sheet for possibilities.

Key Words

Affirmative Action, Nondiscrimination, Employee Nondiscrimination/Affirmative Action, Domestic Partnership Act

Legal References

NONDISCRIMINATION/AFFIRMATIVE ACTION

QSAC Monitored:

Section 5: Personnel

Mandated:

The state department of education requires the comprehensive equity plan to include adoption or readoption of policies ensuring equality in employment and contract practices (N.J.A.C. 6A:7-1.4(c)2). The board must have policy on eliminating sexual harassment and harassment on every other basis.

Other Reasons:

The Americans with Disabilities Act prohibits discrimination against qualified disabled persons in the employment setting.

N.J.S.A. 10:5-3 forbids discriminatory practices against any person or that person's spouse by reason of race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, familial status, liability for service in the Armed Forces of the United States, disability or nationality.

N.J.S.A. 10:5-4.1 forbids employment discrimination against a person because of a physical disability unless the nature and extent of the disability reasonably precludes the performance of the particular employment.

N.J.S.A. 10:5-12 makes it unlawful to discriminate in employment practices against individuals with atypical hereditary or cellular blood traits or because of genetic information or refusal to submit to or make available the results of a genetic test, or domestic partnership status.

N.J.S.A. 10:5-27 reads: "With respect only to affectional or sexual orientation, and gender identity or expression, nothing contained herein shall be construed to require the imposition of affirmative action plans or quotas as specific relief from an unlawful employment practice or unlawful discrimination."

N.J.S.A. 34:19-1 et seq., the "Conscientious Employee Protection Act," makes it illegal for employers to retaliate against employees for exposing illegal, unethical or unsafe workplace practices.

Recommendation:

A policy stating determination not only to comply with all antidiscrimination requirements in hiring but to conduct a vigorous affirmative action/equity program in hiring and employment practices. The policy should also state the district's position on sexual and any other type of harassment in the workplace and educational environment and that appropriate disciplinary action will be enforced. Mandated affirmative action/equity inservice programs should be noted.

Legal References: N.J.S.A. 10:5-1 et seq. Law Against Discrimination
 See particularly:
N.J.S.A. 10:5-3,-4.1, -12, -27
N.J.S.A. 18A:6-5 Inquiry as to religion and religious tests prohibited
N.J.S.A. 18A:6-6 No sex discrimination
N.J.S.A. 18A:18A-17 Facilities for handicapped persons
N.J.S.A. 18A:26-1 Citizenship of teachers, etc.
N.J.S.A. 18A:26-1.1 Residence requirements prohibited
N.J.S.A. 18A:29-2 Equality of compensation for male and female teachers
N.J.S.A. 26:8A-1 et seq. Domestic Partnership Act
N.J.S.A. 34:19-1 et seq. Conscientious Employee Protection Act
N.J.A.C. 6A:7-1.1 et seq. Managing for Equality and Equity in Education
 See particularly:
N.J.A.C. 6A:7-1.4, -1.8
N.J.A.C. 6A:30-1.1 et seq. Evaluation of the Performance of School Districts
N.J.A.C. 6A:32-14.1 Review of mandated programs and services

Executive Order 11246 as amended

29 U.S.C.A. 201 - Equal Pay Act of 1963 as amended

20 U.S.C.A. 1681 et seq. - Title IX of the Education Amendments of 1972

42 U.S.C.A. 2000e et seq. - Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunities Act of 1972

29 U.S.C.A. 794 et seq. - Section 504 of the Rehabilitation Act of 1973

20 U.S.C.A. 1401 et seq. - Individuals with Disabilities Education Act

42 U.S.C.A. 12101 et seq. - Americans with Disabilities Act (ADA)

Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986)

School Board of Nassau County v. Arline, 480 U.S. 273 (1987)

Vinson v. Superior Court of Alameda County, 740 P.2d 404 (Cal. Sup. Ct. 1987)

Taxman v. Piscataway Bd. of Ed., 91 F. 3d 1547 (3d Cir. 1996)

Saxe v. State College Area School Dist., 240 F. 3d 200 (3d Cir. 2001)

The Comprehensive Equity Plan, New Jersey State Department of Education

Possible

Cross References: *2224 Nondiscrimination/affirmative action
 *3320 Purchasing procedures
 *4211 Recruitment, selection and hiring
 *4212.8 Nepotism
 *4247 Employee safety
 *5145.4 Equal educational opportunity
 *6121 Nondiscrimination/affirmative action

*Indicates policy is included in the Critical Policy Reference Manual.